

**EXHIBIT A**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE  
CORDIS CORPORATION, ) Volume II  
Plaintiff, )  
v. ) No. 97-550-SLR  
MEDTRONIC VASCULAR, )  
INC., BOSTON )  
SCIENTIFIC CORP., and )  
SCIMED LIFE SYSTEMS, )  
INC., )  
Defendants. )  
MEDTRONIC VASCULAR, INC., )  
v. ) No. 97-700-SLR  
CORDIS CORPORATION, et al.)  
Defendant. )  
Monday, March 7, 2005  
9:30 a.m.  
844 King Street  
Wilmington, Delaware  
BEFORE: THE HONORABLE SUE L. ROBINSON  
United States District Court Judge  
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APPEARANCES:  
ASHBY & GEDDES  
BY: STEVEN J. BALICK, ESQ.  
-and-  
PATTERSON, BELKNAP, WEBB & TYLER, LLP  
BY: GREGORY L. DISKANT, ESQ.  
BY: EUGENE GELERNTER, ESQ.  
BY: WILLIAM F. CAVANAUGH, JR., ESQ.  
BY: MICHAEL J. TIMMONS, ESQ.  
BY: ERIC HARRIS, ESQ.  
BY: SCOTT HOWARD, ESQ.  
Counsel for the Plaintiff

10  
11  
12 MORRIS, NICHOLS, ARSHT & TUNNELL  
13 BY: KAREN JACOBS LOUDEN, ESQ.  
14 -and-  
15 McDERMOTT, WILL & EMERY, LLP  
16 BY: MICHAEL UNDERHILL, ESQ.  
BY: DONNA M. TANGUAY, ESQ.  
BY: JAMES G. RIZZO, ESQ.  
17 BY: RAYMOND LUPO, ESQ.  
BY: MARK G. DAVIS, ESQ.  
18 Counsel for Defendant

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(1) THE CLERK: All rise. Please be (2)  
seated.

(3) THE COURT: I understand that's (4)  
one issue for this morning. This needs to  
be (5) addressed.

(6) MR. DAVIS: Your Honor, during the (7)  
cross-examination of Dr. Fischell depending  
on (8) what areas that Cordis gets  
into, it's possible (9) that the issue of  
product-to-product comparison (10) may  
come up if they talk about the commercial (11)  
success of the Palmaz-Schatz  
stent.

(12) THE COURT: All right. Well, I do (13)  
have my answer for that. I don't have a  
time (14) for a lot of debate, so I'll give you  
my (15) reflections.

(16) MR. DAVIS: Certainly.

(17) THE COURT: I've gone over the (18)  
Federal Circuit opinion and I've gone  
over the (19) materials. It seems to me that  
the Federal (20) Circuit has held by

reversing my claim (21) construction by  
the language it used that wire (22) stents  
can fall under the rubric of this claim (23)  
construction.

(24) Therefore, it is my opinion that

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(1) product-to-product comparisons in  
this context (2) would be so confusing  
and prejudicial that I (3) cannot let them  
in.

(4) Because sharp edges are not, (5) that's  
an added claim limitation here. And by (6)  
saying that our products differ from the  
(7) Palmaz-Schatz because we do not  
have sharp edges (8) and our products are  
better because of that, (9) sharp edges are  
not part of the claim (10) construction  
here. And so I will not allow it (11) on  
cross.

(12) MR. DAVIS: Thank you, Your Honor.

(13) THE COURT: All right.

(14) MR. RIZZO: Your Honor, good (15)  
morning.

(16) THE COURT: Yes.

(17) MR. RIZZO: Quickly with regards (18)  
to certain exhibits that Cordis would like  
to (19) use with Dr. Fischell, Medtronic  
had objected to (20) Document Numbers  
PX 18, PX 227, and PX 228, (21) primarily  
hearsay grounds. But pointed out to (22)  
counsel for Cordis that to the extent they  
(23) wanted to to use these documents,  
which where (24) articles from the New  
England Journal of

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(1) Medicine under Federal Rule of Evidence  
803(18), (2) such learned treatises  
or medical periodicals (3) such as these  
articles should be read into (4) evidence  
but not be received in as exhibits.

(5) There are also some documents that (6)  
were not included in their production  
the other (7) night. And we have not seen  
them. We believe (8) that probably demon-  
stratives. They are PX 2940, (9) PX  
2958, PX 3262, PX 3789A and PX 3789C.

(10) MR. CAVANAUGH: I think I can make  
(11) life easier on the first one, Your  
Honor. With (12) respect to the three  
publications, I think (13) that's subject —  
we can fight about at a later (14) date.  
We're not going to be using any of these  
(15) with this witness.

(16) The list of other exhibits that (17) Mr.  
Rizzo read off as being objected to, this is  
(18) the first that we've heard about these  
(19) objections. And I believe counsel's  
(20) understanding is that we'd be noti-  
fied of (21) objections the night before, at  
least the night (22) before. We didn't get  
any notice of that. Some (23) of these  
exhibits were previously admitted in (24)  
the last trial. They include actual product  
to

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(1) natural samples to stents.

(2) And frankly, the list that Mr. (3) Rizzo  
went so fast without him giving us prior  
(4) notice of that, I don't know what else  
is on the (5) list. But I would have  
appreciated learning it (6) the night  
before, instead of coming into Court.

(7) THE COURT: All right. So (8) Mr. Rizzo, I  
obviously don't know what these (9)  
documents or things are.

(10) What is this evidence that you're (11)  
objecting to?

(11) MR. RIZZO: Your Honor, excuse me.

(12) Your Honor, there is a joint pretrial  
order in (14) effect. We raised our ob-  
jections timely. We (15) raised —

(16) THE COURT: You know, I'm just (17)  
asking you what they are so we can  
resolve this.

(18) MR. RIZZO: Your Honor, I don't (19)  
know why they were not included in  
their (20) production. I don't know what it  
is that we (21) should be objecting to. We  
put in our (22) correspondence that we  
will reserve our right to (23) object upon  
receipt of the same.

(24) So I don't know how we could have

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(1) anticipated —

(2) THE COURT: Slowly identify what (3)  
the exhibit number is.

(4) MR. RIZZO: One moment, please, (5)  
Your Honor.

(6) THE COURT: Thank you.

(7) MR. RIZZO: Copies of PX 2940, PX (8)  
2958.

(9) THE COURT: Wait. 2940. 2958.

(10) MR. RIZZO: 3262.

(11) THE COURT: 3262.

(12) MR. RIZZO: 3789A.

(13) THE COURT: 3789A.

(14) MR. RIZZO: And 3789C.

(15) THE COURT: 3789C. And when you  
(16) say they were not included in Cordis'  
(17) production, which production are  
you talking (18) about?

(19) MR. RIZZO: We're talking about (20)  
the production of exhibits which Cordis  
provided (21) to us the other night  
inconsistent with the PTO.

(22) THE COURT: Their responsibility (23)  
to give you exhibits forty-eight hours  
before?

(24) MR. RIZZO: Correct.

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(1) THE COURT: Okay. Thank you very (2)  
much. Now, let's see what these are and  
if (3) there really is an objection.

(4) MR. CAVANAUGH: Let me sort my  
way (5) through my list. 2940, Your

[22] on November 27, 2000?

[23] A: Well, again, you asked me then the [24] same way you're asking me now, and I didn't

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[11] catch the twist of the question. I don't know [2] what I answered about that.

[13] I came up with it, the placing [4] slots on metal tubes way before I met [5] Mr. Schultz, regardless of what I said here, the [6] way it was interpreted, the way the question was [7] asked.

[8] Q: Let me make sure I understand what [9] the twist in the question was, if I could.

[10] A: Okay.

[11] Q: The question was "And your first [12] idea about how you might make the slotted tube [13] as opposed to expanded metal, they came from Dr. [14] Schultz when you went to talk to him; right?"

[15] A: That the problem, I was thinking [16] about — I didn't listen to the question as I [17] sometimes did correctly. You were asking me [18] specifically if Mr. Schultz had taught me that [19] in order to make a better expandable stent, I [20] had to make slots in the tube, which was not the [21] case.

[22] I was thinking that you were [23] asking me how to make — how the slots could be [24] made on the balloon, on the stent good.

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[1] Q: But you agree with me that that's [2] not my question, correct?

[3] A: That's what it says there. That's [4] in the record.

[5] Q: And you were under oath, correct?

[6] A: I was under oath, yes.

[7] Q: And you were trying your best to [8] answer truthfully, is that true?

[9] A: As always, yes.

[10] Q: Okay. Now, you don't claim that [11] any ideas that Dr. Schultz gave to you are part [12] of your invention, do you?

[13] A: All the ideas that Mr. Schultz [14] gave me about how to make the stent, no, they [15] were not part of the invention.

[16] Q: Let's take a look, if we could, at [17] Page 6 of your 1983 monograph, and this is at [18] page, or I'm sorry, it's Exhibit 3573.

[19] So I believe we're back to Volume [20] 1.

[21] A: Can you please tell me the [22] exhibit? Number.

[23] Q: Which one, sir?

[24] A: The exhibit number.

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[1] Q: Yes, sir. It's 3573.

[2] A: Okay.

[3] Q: And this is a paper that you wrote [4] in 1983; correct?

[5] A: That's correct.

[6] Q: Could we have it up on the screen, [7] please. And I would like to direct you, if I [8] could, to page six —

[9] MR. UNDERHILL: I apologize, may I [10] move it into evidence first?

[11] MR. HOWARD: No objection, Your [12] Honor.

[13] MR. UNDERHILL: Thank you. Now,

[14] may I have it on the screen, please.

[15] Could we go to page six? And I'm [16] interested in the second paragraph.

[17] BY MR. UNDERHILL:

[18] Q: And I hope not to have to spend a [19] lot of time on this, Dr. Palmaz, but my question [20] here on this paragraph, is in this paragraph you [21] describe the bars of the slotted tube stent as [22] twisting when the stent is expanded; correct?

[23] A: Yes, that's correct.

[24] Q: And so what we're talking about

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[1] when we talk about the stent members twisting, [2] we're talking about this part right here [3] twisting and turning out of the plane; is that [4] correct?

[5] A: That's correct.

[6] Q: When it's expanded. So then you [7] get a projecting edge when it turns; is that [8] correct?

[9] A: That's correct.

[10] Q: And as a result of that, that [11] twisting that we were just talking about, the [12] effective wall thickness of the stent will [13] increase as a result; is that correct?

[14] A: After balloon expansion, yes.

[15] Q: When it twists out of plane, and [16] you have the projecting edges?

[17] A: Yes.

[18] Q: Okay. Thank you. [19] Now, at the time you wrote the [20] monograph, you were aware it did this, because [21] you had looked at expanded metal; correct?

[22] A: No, actually that observation came [23] from my cardboard models. I made — since I [24] couldn't manufacture this in my house, I made

[1] large cardboard models, and then I cut out the [2] slots with scissors.

[3] I would tape them together with [4] Scotch tape, and I would put my hands inside [5] simulating a balloon, and I would pull them out.

[6] And I noticed that the ribbons in [7] between the slots actually tended to

twist. And [8] since I didn't have the ability to do that with [9] the real thing which would be, you know, dead [10] soft soluble metal, then the assumption was this [11] thing was going to behave like this once it [12] became a real medical device.

[13] That was my assumption when I [14] wrote this monograph after my visit with [15] Mr. Schultz.

[16] Q: So it wasn't based on your [17] observations of expanded metal, is that correct?

[18] A: No.

[19] Q: Let's look at your prior [20] testimony, if we could. Let's go back to Volume [21] 2, please, and let's look at February 9, 2001, [22] if you don't mind, please.

[23] A: What's the exhibit number?

[24] Q: It's February 9, 2001. Oh,

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[1] Exhibit 2.

[2] A: I'm sorry —

[3] Q: Volume 2. Volume 2.

[4] A: Volume 2?.

[5] Q: Yes.

[6] A: And the number?

[7] Q: Page number, sir, is 646, Line 13.

[8] A: You know the tabs are indicated by [9] TT and then a date.

[10] Q: I beg your pardon, sir. [11] Sir, may I ask my colleague to [12] come up and assist? Would that help —

[13] A: Yes.

[14] Q: Thank you.

[15] A: — to save time?

[16] MR. UNDERHILL: Jim, I think I [17] gave the wrong page number. Instead of 614, [18] it's 646.

[19] BY MR. UNDERHILL:

[20] Q: 646, beginning at Line 13, and [21] actually the person asking questions here is [22] Mr. Cavanaugh, who is Mr. Diskant's partner.

[23] Mr. Cavanaugh is here in court [24] today?

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[1] A: Yes.

[2] Q: And Mr. Cavanaugh is doing the [3] question?

[4] A: Yes.

[5] Q: And he's Cordis' attorney?

[6] A: Yes.

[7] Q: And let me read this to you. The [8] Cordis lawyer asked you: We're looking at the [9] same passage here, and the question is:

[10] "Question: You write there" — [11] could we go back to the language on the —